

1 JUDGE SIPPEL: Again, my first comment is or my
2 first reaction or my first ruling on this is that you've
3 shown it to be nothing more than a fishing expedition at
4 this point and I'm not going to put the witness on the stand
5 to do that.

6 MR. HOLT: Your Honor, I would say aside from the
7 relevancy that I've previously described, it's also relevant
8 to the issue of compliance efforts which we've heard
9 significant testimony about from the witness and from
10 counsel. You know, if service to these paths, to these
11 locations, was prematurely activated, during a period when
12 they were purportedly filing a compliance program, it would
13 I think be significant to Your Honor's consideration of the
14 case. And if the witness has factual information that he's
15 able to convey today, regardless of whether or not he was
16 prepped to provide that information, I think that it should
17 come out.

18 JUDGE SIPPEL: Well, but it's -- do you have any
19 knowledge at all? I'm asking anybody that's representing
20 Liberty about additional unauthorized activations with
21 respect to Cablevision properties?

22 MR. SPITZER: Not with --

23 JUDGE SIPPEL: I'm sorry, what is it?
24 Cablevision's sphere of influence or whatever it's called?

25 MR. HOLT: Our service territory.

1 JUDGE SIPPEL: Your service territory.

2 MR. SPITZER: I heard Mr. Holt saying different
3 things, Your Honor. We have no knowledge of any activations
4 during the period of the compliance program. That I think
5 was what he was asking, whether or not Mr. Price was aware
6 of the failure of the compliance system, compliance program
7 that was authorized after and put in place some time in
8 April, late April, early May forward. We have no knowledge
9 of that whatsoever, Your Honor. And he can ask the witness
10 about it.

11 MR. HOLT: Mr. Spitzer's answer makes me curious
12 as to whether he's aware of unauthorized operations in
13 Cablevision territory that commenced prior to that are not
14 listed in the HDO but that are --

15 MR. SPITZER: I am not aware -- Your Honor, let me
16 say merely this. I am not going to testify about things
17 that we have discovered in a privileged context. I'm just
18 not going to do it. I think it's irrelevant to this
19 hearing. I'm not going to provide Mr. Holt that
20 information. So I won't answer that question.

21 JUDGE SIPPEL: All right. I'll permit you to ask
22 the question in light of -- in a compliance context, but
23 no -- you know, I'm not going to permit a lot of questions.
24 Now, your question, let me be sure I understand it now.
25 Your question is whether or not he has any knowledge of any

1 unauthorized activations that would be after, that would
2 have occurred after the disclosure was made to the
3 Commission. What's that date again? Was that May?

4 MR. HOLT: We can focus on the period May 17th.

5 JUDGE SIPPEL: May 17th.

6 MR. HOLT: Through September --

7 MR. SPITZER: Your Honor, up to the current.

8 JUDGE SIPPEL: Up to the present, sure, sure.

9 MR. HOLT: I will state for the record that
10 everything, that I do have some concerns about what I seem
11 to -- I have some concerns raised by counsel's answer to
12 your question earlier which very much narrowed the scope of
13 your question and seemed to me to be suggesting that there
14 are additional unauthorized paths that are not listed in the
15 HDO that were discovered and that we have not been made
16 aware of. And from Cablevision's perspective, that
17 information should be made available to us. I understand
18 Your Honor's ruling with respect to the internal audit, but
19 that's factual information that we're being denied regarding
20 Liberty's operations in our service territories.

21 JUDGE SIPPEL: Well, as I said before, without
22 adding -- I'm not going to, first of all, I think I put
23 counsel on the spot and counsel was trying to respond to me.
24 Counsel is not here to testify as to facts, number one.
25 Number two is I'm not going to read anything nefarious into

1 his cautionary -- his cautioned answer. And number three,
2 you've got a witness here who now, you know, we've come
3 around to your side. I mean, you won the argument. I don't
4 know why you just don't bring the witness back in and ask
5 him the questions.

6 MR. HOLT: I'm being constrained to ask questions
7 between May 17 and the --

8 JUDGE SIPPEL: To now.

9 MR. HOLT: Right. But I think counsel's response
10 suggests that unauthorized operations occurred prior to that
11 time that have not been identified in the HDO nor to us
12 during discovery.

13 JUDGE SIPPEL: Well, if you get into that, then
14 we're going to have to go through -- in fairness to the
15 witness, he has to be given an opportunity to distinguish
16 between that which has been disclosed in the hearing
17 designation order and some speculative other things that
18 happen in that timeframe that you don't really have any hard
19 evidence to confront him with. It's not fair to the
20 witness. It's just not fair. I mean, it's -- I'm not going
21 to editorialize on this anymore. I've said that before.
22 There are procedures by which newly discovered information
23 can be used as grist to add issues to cases. It happens a
24 lot in Commission litigation. And that's the procedure that
25 would be available to you if you had such information, not

1 to put this witness through that kind of a speculative range
2 of questioning. However, as I said before, you've succeeded
3 to the extent of convincing me that for compliance purposes
4 you can ask him let's say from May 17th, '95 to the present
5 whether or not there are any unauthorized activities.

6 MR. HOLT: Thank you, Your Honor.

7 JUDGE SIPPEL: Let's bring the witness back in
8 because we're getting close to the lunch break. Do you have
9 a lot more questions?

10 MR. HOLT: No, not at all.

11 JUDGE SIPPEL: Stay on the record. Well, I'll let
12 you go off the record until he gets back in.

13 (Whereupon, a brief recess was taken.)

14 JUDGE SIPPEL: On the record. Mr. Price, the
15 question was discussed in your absence as to whether or not
16 questions could be asked of you about whether
17 unauthorized -- possible unauthorized activation other than
18 the ones that are referred to in the hearing designation
19 order. I have instructed after some considerable argument
20 and discussion here that counsel may ask you a question with
21 respect to what would really be in the nature of compliance
22 with respect to what has been done since May 17, 1995. And
23 I'll permit counsel to phrase the question as he sees fit.
24 Mr. Holt.

25 //

1 BY MR. HOLT:

2 Q Mr. Price, from the period starting May 17, 1995
3 through the end of '95, through December of 1995, are you
4 aware of any instance where Liberty commenced operations
5 without FCC authority?

6 A No, I am not.

7 JUDGE SIPPEL: Under your present -- under the
8 system, I'm going to just follow up on that. Under the
9 system, the compliance system, the regimen has been
10 instituted since May of 1995 to the present, if something
11 like that did occur, would you have knowledge of it?

12 THE WITNESS: I certainly would.

13 JUDGE SIPPEL: All right. That doesn't go as far
14 as you want it to go, but that's it for now. Do you have
15 anything more?

16 MR. HOLT: I don't, Your Honor. I have an
17 administrative matter to raise.

18 JUDGE SIPPEL: Well, before you do that, let me
19 ask Mr. Weber do you have much to ask this witness?

20 MR. WEBER: No, Your Honor, not much at all.

21 JUDGE SIPPEL: Do you want to keep going?

22 THE WITNESS: Yes, sir.

23 JUDGE SIPPEL: Go ahead.

24 MR. WEBER: Thank you.

25 //

1 REDIRECT EXAMINATION

2 BY MR. WEBER:

3 Q On one question you were asked today by
4 Mr. Beckner relating to why a particular document didn't
5 disclose the fact that you knew that Time Warner had filed
6 petitions against all Liberty applications, you had said in
7 your answer that you had assumed that that had already been
8 in the record, disclosed in the record somewhere. And my
9 question is just where did you assume it had been disclosed?

10 A I -- I took for granted that during the various
11 responses we provided to the FCC unfolding this matter that
12 that had been covered or at least subsumed in one document
13 or another. I'm not referring to any specific document.

14 Q When you learned in April of '95 that there were
15 premature operations, were you upset with Pepper & Corazzini
16 counsel at all for this problem?

17 A I was upset with everyone who was supposed to be
18 involved in a procedure I thought I had laid out and who was
19 not. So Pepper & Corazzini were among those that I was
20 under the impression was supposed to be coordinating with
21 engineering to make sure we were in compliance. So I was
22 upset by their lack of surveillance as well as that of our
23 engineering people.

24 Q Did you convey this to Pepper & Corazzini counsel
25 at all?

1 A I think there was, I don't remember the precise
2 words, but I was pretty upset and frustrated and angry and
3 both at our engineering people and everybody involved in the
4 process. I'd be surprised if that didn't come through in my
5 remarks. I don't recall a day or a sentence or a person
6 that I balled out, but I was upset.

7 Q You don't recall say calling Mr. Barr to ask him
8 why this has happened?

9 A No, I don't.

10 Q And I guess likewise you don't recall calling
11 Mr. Lehmkuhl to ask him why this had happened?

12 A No, we did, however, back and forth on the
13 telephone get into and try to do the reconciliation of where
14 we had authorized paths and where we didn't. I talked to
15 him, but it was more to get to the bottom of things than to
16 lay blame.

17 Q And at what point were these discussions with
18 Mr. Lehmkuhl had?

19 A I believe it was later in the spring when we were
20 trying, I was trying to put together a list, a full list of
21 everywhere we were operating and when sites had been built
22 and where they were activated and when they were licensed
23 and not licensed and putting that mosaic together.

24 Q If you can recall, would that have been before or
25 after the May petition filed by Time Warner which disclosed

1 the two paths?

2 A I think it was probably both before and after. I
3 believe I started those conversations Monday after I started
4 to find out what was going on and they continued from that
5 May first Monday onward.

6 Q And it was Mr. Lehmkuhl you spoke to, not
7 Mr. Barr?

8 A I believe it was Mr. Lehmkuhl. I don't recall
9 speaking with Mr. Barr during that process.

10 Q Do you receive copies of the bills or the invoices
11 from Pepper & Corazzini?

12 A Yes, I do.

13 Q And do you review them?

14 A No, I don't review them. I generally pass them
15 onto the accounts payable department or to other, Andy
16 Berkman, another one of our local lawyers who will review
17 them for accuracy and for, to cut a check. But I don't
18 review the line items in the bills.

19 Q And that same process would have been filed in the
20 1994-1995 time period?

21 A That's correct.

22 Q In that 1994-1995 time period, were you involved
23 with marketing at all?

24 A Extensively.

25 Q Let me be more explicit with my question here.

1 Were you out contacting building managers, building owners,
2 trying to convince them to sign up with Liberty?

3 A Definitely.

4 Q And did your contact with the buildings then cease
5 after the contracts were signed?

6 A Generally, yes. Unless there was some issue that
7 was unresolved or something, a call from a board or an owner
8 that would require me to get involved because of something
9 new that had come up.

10 Q You didn't keep in contact up until the point the
11 service was actually activated?

12 A In the normal course, it would be activated, oh,
13 the contract -- let me clarify this. The contract would
14 often be signed, of course, months before the building was
15 built or service was activated.

16 So I would be in touch with the building during
17 that interim period between the installation and the time we
18 were getting to the building to answer questions that would
19 come up, when we were coming to the building, was our
20 channel line up revised questions that residents may have.
21 Letters from Time Warner were sometimes sent to buildings
22 that we had contracted with. People would get confused,
23 need another Q&A session.

24 Sometimes the board would ask us to go have a
25 meeting with the residents in a town meeting fashion and

1 explain to them what was going on. So I would sometimes go
2 to those interim meetings. I would occasionally, but rarely
3 go to visit a site where we were actively signing up people
4 in the lobby, but rarely after that point would I be
5 involved unless something extraordinary happened.

6 MR. WEBER: Thank you, Mr. Price. That's all the
7 questions I have.

8 JUDGE SIPPEL: Let me just ask a question or two
9 and then go back on redirect.

10 MR. SPITZER: Sure.

11 JUDGE SIPPEL: Is it going to take you very long?

12 MR. SPITZER: Virtually nothing, Your Honor. My
13 only question is whether you would want us to do that after
14 Mr. Beckner had said he might have one or two more
15 questions.

16 JUDGE SIPPEL: After lunch.

17 MR. SPITZER: After lunch. We're happy to -- it
18 will take us two minutes.

19 JUDGE SIPPEL: All right. Well, why don't we do
20 that? We're going to have to come back after lunch because
21 you're going to have some more questions on your --

22 MR. BECKNER: I just want a chance to look at
23 these transcripts. I haven't gone through all of them. I
24 can't promise you that I'll have a question, Your Honor.

25 JUDGE SIPPEL: Mr. Holt.

1 MR. HOLT: I was going to seek leave to miss at
2 least a portion of this afternoon if there is a possibility
3 that we can wrap this up, my taking -- I don't know how much
4 time Mr. Beckner needs. But I was going to suggest possibly
5 we could try to get this done before, before lunch. I don't
6 know if that's acceptable to the rest of you.

7 JUDGE SIPPEL: You want to comment, Mr. Beckner?
8 The records were just given to you this morning. You
9 certainly have a right to take a look at them before the
10 witness leaves town. If you have some questions, you have a
11 right to ask them. But I'm not --

12 MR. HOLT: I'm not going to be two minutes, Your
13 Honor.

14 JUDGE SIPPEL: Well, let me, let me ask my
15 questions. Then we'll go into redirect and then we'll take
16 a break for lunch. Then we'll come back here in an hour and
17 you let us know whether or not you have any questions.

18 MR. HOLT: That's fine.

19 JUDGE SIPPEL: If you want to use that time to
20 excuse the witness if you want to introduce the McKinnon
21 deposition, you can do it at that time also.

22 MR. HOLT: All right.

23 JUDGE SIPPEL: So, I mean, you don't have to come
24 back this afternoon if you've got another commitment.
25 That's okay.

1 MR. HOLT: The only outstanding issue other
2 than -- brief was the result of conversation I'm going to
3 have with Mr. Spitzer and Mr. Begleiter regarding the
4 information that I had sought concerning whether or not
5 Liberty had ceased billing 2727 Palisades.

6 JUDGE SIPPEL: Well, that may take a little
7 longer, I mean, take a little longer to pull together than a
8 lunch break. So you can continue to talk to them, but we'll
9 be back in session next week and we can follow up on that if
10 that becomes more than it is right now.

11 MR. HOLT: Thank you, Your Honor.

12 JUDGE SIPPEL: Let me just ask you a question.
13 When was it -- well, what is your, to your knowledge as you
14 sit here today, what was Mr. -- what was Mr. Nourain doing
15 to determine whether or not he had authorization to activate
16 these paths that are at issue here today?

17 THE WITNESS: It was my impression from what I had
18 asked him to do and what through Mr. McKinnon and through
19 counsel was to after he had completed the path coordination
20 to determine with counsel that that path was clear, file a
21 license with the FCC, an application for a license. And if
22 that was not forthcoming in a reasonable period of time
23 where we would be in jeopardy of not getting our license in
24 time to provide the service we had, that we had committed
25 to, request STAs to cover us.

1 JUDGE SIPPEL: My question to you is what -- you
2 determined you had a problem and you testified to that April
3 26th, 27th, in that timeframe. At that point to the
4 present, what have you -- as you're sitting here today, what
5 had actually determined that Mr. Nourain was doing?

6 THE WITNESS: In retrospect I think the best I can
7 reconstruct it looking at what I know --

8 JUDGE SIPPEL: Well, it was your job to find out
9 what he did, wasn't it?

10 THE WITNESS: Well, it was -- there was an
11 investigation --

12 JUDGE SIPPEL: I don't want to talk about an
13 investigation. I just want to know what it was that
14 Mr. Nourain was doing.

15 THE WITNESS: All right. But you ask after
16 that point. So after that point counsel said we are taking
17 care of this and we're going to get to the bottom of this
18 and I should go about my duties under a strict compliance
19 program to make sure that whatever happened wouldn't happen
20 again. I didn't get into a dialogue with Mr. Nourain about
21 how could this have happened and what were you doing? So it
22 was counsel that undertook that function. My job was to
23 make sure it didn't happen again.

24 JUDGE SIPPEL: Do you have any first hand
25 knowledge from your inquiries after, on or after April 28th,

1 April 26th, work with that date, as to what Mr. Nourain was
2 doing, what was his mode of operation while he was under
3 your operation?

4 THE WITNESS: No, he wasn't directly under my
5 supervision. He was under the supervision of Mr. McKinnon
6 and Mr. Ontiveros. But he certainly was one of the people
7 working in my organization. But, no. I never had a
8 conversation with Mr. Nourain about how could -- I did
9 immediately after when I started to recognize we had a
10 problem there and he said, well, I'll get working on this --

11 JUDGE SIPPEL: You're not, you're not, you're not
12 responding to my question. Maybe you can't. I don't know.
13 But who was the lowest official or officer of Liberty in
14 the, at the executive level of management who was
15 responsibility for what Mr. Nourain was doing?

16 THE WITNESS: Mr. Ontiveros.

17 JUDGE SIPPEL: Is he executive level?

18 THE WITNESS: Oh, definitely. He's the General
19 Manager, was and is the General Manager -- was the General
20 Manager of our company then and is the General Manager of
21 the successor company.

22 JUDGE SIPPEL: He's not a -- is he a Vice
23 President or something like that?

24 THE WITNESS: It would be -- we don't have any, I
25 don't think we have any Vice Presidents of the company. So

1 he would be on the level with the Director of Marketing,
2 Director of Customer Service and as General Manager of
3 anything would have a more important title than the other
4 department heads would.

5 JUDGE SIPPEL: He's not an officer of the company.

6 THE WITNESS: No, there were no Vice Presidents.
7 There were just department heads reporting to me.

8 JUDGE SIPPEL: All right. Just an employee. He's
9 not -- but you're saying he's executive level.

10 THE WITNESS: Oh, definitely. He would make
11 management decisions on behalf of the company on a regular
12 basis. He was the General Manager of Operations and more
13 people worked for him by far than anyone in the company.

14 JUDGE SIPPEL: And he reported to you.

15 THE WITNESS: That's correct.

16 JUDGE SIPPEL: And he was in a, well, he was in a
17 building, he was in a different building than you were.

18 THE WITNESS: That's correct.

19 JUDGE SIPPEL: I'm still having difficulty with
20 this one. You left it completely up to the attorneys to
21 determine what Mr. Nourain was doing during this time period
22 when the unauthorized activation occurred and you didn't
23 really, you had no idea what he was doing. I mean, what he
24 was doing in terms of saying what his modus operandi was in
25 terms of going into this activation phase. Do you

1 understand my question?

2 THE WITNESS: Yes, I do, sir. I tried to answer
3 it before. I was instructed by counsel that we should put
4 into place immediately a strict compliance program and that
5 I was to participate in helping to formulate that to make
6 sure it worked and then abide by it. But I was also
7 instructed by counsel to go about my business while they
8 conducted an investigation and that I shouldn't interfere
9 with that investigation. And it could be their opinion that
10 if I were to talk to people and, you know, give my -- put my
11 two cents in the middle of that, I would somehow distort
12 what was going to come out. I was just as happy to go about
13 my business and leave it to a credible third party to
14 determine exactly what went wrong there.

15 JUDGE SIPPEL: And how long did it take for that,
16 from your standpoint as the executive -- your title is what?
17 You're the President of the company.

18 THE WITNESS: Yes, sir.

19 JUDGE SIPPEL: President of the company. At what
20 point were you satisfied that you knew, that you knew all
21 the facts relating to Mr. Nourain's activities? At what
22 point in time was that?

23 THE WITNESS: I still am not satisfied I know all
24 the facts regarding Mr. Nourain --

25 JUDGE SIPPEL: Just him and how he operates. I'm

1 not talking about everything he did everyday for every path.
2 I'm just saying his method of determining when he had
3 authorization to activate.

4 THE WITNESS: Only what I know from this record,
5 Your Honor. I haven't talked to Mr. Behrooz or anyone
6 associated with him to try to uncover that. I was
7 instructed that this part --

8 JUDGE SIPPEL: I didn't ask whether you -- you've
9 already answered that question. You said you kept away from
10 it and turned it over to the outside counsel.

11 THE WITNESS: Right.

12 JUDGE SIPPEL: I'm saying is there a point in time
13 at which you were told, either informally or I'm not even
14 asking whether there was a memo. But somebody at some point
15 told you as the President of the company, and I would think
16 that you would be entitled to know, what it was that
17 Mr. Nourain was doing that prompted the situation to occur.

18 THE WITNESS: All I knew was the conclusion, Your
19 Honor. I didn't know the process. I know that whatever
20 procedure I had thought I put in place was not being
21 followed. And as a result, service was being activated to
22 buildings by Behrooz and it related to a foul up between
23 what I thought was supposed to happen and what Behrooz and
24 regulatory counsel were actually doing.

25 But that's as far as I go in terms of why that

1 happened and what exactly Behrooz was doing or not doing
2 that contributed to that or what exactly counsel was doing
3 or not doing. And even as late as these proceedings I've
4 been instructed specifically please don't talk to the other
5 people that have been. And Your Honor instructed me
6 specifically last week either involved in this proceeding or
7 who might be involved in this proceeding and I'm very
8 sensitive to that.

9 JUDGE SIPPEL: Well, that's a different, that's a
10 different timeframe. That's a different instruction. That
11 has to do with the testimony here today. I'm simply asking
12 you a question as the president of the company. I mean,
13 this is something that went on, on your watch, right?

14 THE WITNESS: That's right.

15 JUDGE SIPPEL: I mean, it would be a perfectly
16 logical thing for you to ask somebody what happened.

17 THE WITNESS: And I did ask that question, Your
18 Honor. And the answer I got was exactly as I stated. I
19 didn't get --

20 JUDGE SIPPEL: I'm not getting it very directly
21 though. You're kind of going off into the attorneys and
22 you're off into this and you're off into that. But you
23 don't really know or you're not able to tell me a point in
24 time. You can't tell me sitting here today thus far what it
25 was that Mr. Nourain was doing. That is what his system was

1 and also when you learned of what that system was.

2 THE WITNESS: No, I cannot tell you that, Your
3 Honor. Everything since the time we uncovered it, it has
4 been wrapped in one or several legal proceedings. And I
5 have frankly been warned off of those kind of
6 communications, for right or for wrong.

7 JUDGE SIPPEL: Bear with me just a minute. All
8 right. Now, having, having said that, my question to you is
9 with respect to Time Warner's number eight -- Exhibit 18
10 which you signed an affidavit attesting to its truth and
11 accuracy. On page 003 of that affidavit, of that surreply
12 rather.

13 THE WITNESS: Yes, sir.

14 JUDGE SIPPEL: Do you see where it says it has
15 been Liberty's pattern and practice to relate a grant of
16 either a pending application or a request for STA prior to
17 making a microwave path operational?

18 THE WITNESS: Yes, sir.

19 JUDGE SIPPEL: How could you make that statement
20 under oath on May 17th without knowing what it was that
21 Mr. Nourain was doing?

22 MR. BEGLEITER: Your Honor, if I may, I would ask
23 Your Honor outside the presence of the witness to look at
24 the reference made in that -- after that sentence.

25 JUDGE SIPPEL: Which is what, Exhibit 2?

1 MR. BEGLEITER: Right. I believe Exhibit 2 is
2 someone else's deposition.

3 JUDGE SIPPEL: Oh, all right. That's the source
4 for the statement. But my question to the witness is just
5 as I have stated it, just as I stated the question. It
6 still remains the same question. You signed a declaration
7 stating that you read the reply, the surreply, and that the
8 facts contained therein are true and correct to the best of
9 your personal knowledge, information and belief.

10 THE WITNESS: That's correct, sir.

11 JUDGE SIPPEL: What was your personal knowledge,
12 information and belief with respect to that statement that I
13 read to you?

14 THE WITNESS: That it was, from what I had laid
15 out --

16 JUDGE SIPPEL: No, no, no. This is you saying as
17 a fact that it has been, not that it should have been. It
18 has been your pattern and practice, right?

19 THE WITNESS: Right.

20 JUDGE SIPPEL: Your policy. That's a different P
21 word. This is pattern and practice. This is what happened.

22 THE WITNESS: I took that to mean, Your Honor,
23 that it was the procedure that policy was the pattern and
24 practice.

25 JUDGE SIPPEL: Policy to you is the same as --

1 you've answered my question. Do you understand my question?

2 THE WITNESS: Yes, it was certainly our policy to
3 abide by the law.

4 JUDGE SIPPEL: I'm not asking you what your policy
5 was. I'm asking what you factually knew at the time that
6 you signed off on this affidavit on May 17th. I'm asking
7 you factually what you knew. And you've answered me. I
8 mean, I've asked you that question two or three different
9 ways and you've answered me, given me the same answer. So,
10 in fairness to you and the record, I don't think it is
11 incumbent upon me to go any further with this. You
12 certainly may redirect him on it if you care to.

13 MR. SPITZER: If I could have a moment, Your
14 Honor.

15 JUDGE SIPPEL: Let's go off the record.

16 (Whereupon, a brief recess was taken.)

17 JUDGE SIPPEL: Yes, sir. It's 20 minutes of 1:00.

18 MR. SPITZER: This should be brief, Your Honor.
19 Do you wish me to do my redirect? I think it should take
20 five minutes total.

21 JUDGE SIPPEL: Well, does anybody have any
22 objection to going forward with this?

23 MR. HOLT: None.

24 JUDGE SIPPEL: Let's do it.

25 MR. SPITZER: Thank you, sir.

1

RECROSS EXAMINATION

2

BY MR. SPITZER:

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7

Q Mr. Price, you were just directed to Time Warner Cablevision Exhibit 18 and in particular page three and the final sentence of the first paragraph which reads it has been Liberty's pattern and practice to wait -- do you see that sentence?

8

A Yes.

9

10

11

Q At the time that you signed the declaration that is Exhibit 1 to this document, you believed that sentence to be the case, is that correct?

12

A That's correct.

13

14

15

Q Have you subsequently learned that what you refer to here as the pattern and practice on page three, that last sentence --

16

MR. HOLT: Objection, leading.

17

18

19

JUDGE SIPPEL: Well, I'm going to permit the question. This goes right to the heart of it. Go right ahead.

20

BY MR. SPITZER:

21

22

Q Mr. Price, have you subsequently learned that that pattern and practice may not have been abided by?

23

A Yes.

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Q And in particular have you learned that it was not abided by with respect to the sites that are listed in the

1 surreply which is Exhibit 18?

2 A Yes, that's correct.

3 Q And your understanding, again, was when you stated
4 a pattern and practice that was the policy as you understood
5 it.

6 JUDGE SIPPPEL: Well, that's been asked and
7 answered. I'm not going to permit you to lead a witness
8 into saying something that just is clearly contradictory to
9 what that sentence reads. That sentence reads pattern and
10 practice. It doesn't say policy.

11 BY MR. SPITZER:

12 Q At the time that you signed the declaration which
13 is Exhibit 1 to this document, did you understand that there
14 was a divergence between the policy and the pattern and
15 practice?

16 A Yes, I did.

17 Q With respect to the buildings that are listed in
18 this document?

19 A Yes, I did. And I've testified to that.

20 Q There was reference earlier in some questions that
21 Mr. Beckner posed to a contractual provision which requires
22 Liberty to provide service in either 60 days or 90 days or
23 perhaps 120 days in various contracts. Do you recall that
24 testimony?

25 A Yes.

1 Q And are you familiar generally with the fact that
2 there is a clause such as that in many if not most of the
3 contracts that Liberty assigned?

4 A Yes, I am.

5 Q Do you know if Liberty has ever had a contract
6 voided or if a building has ever tried to get out of a
7 contract because Liberty did not provide service within the
8 requisite time period?

9 A Not that I recall. I don't believe any building
10 has ever tried or in fact canceled a contract because we
11 didn't provide timely service.

12 Q Are there in fact buildings where you provide that
13 service after the period -- you commenced to provide service
14 after the period defined in that contract?

15 A Yes, very often.

16 Q Did you maintain your own list of buildings with
17 respect to which Liberty had been licensed to provide
18 service?

19 A No, I did not.

20 Q And just so it's clear, when I used the word
21 licensed in that prior question, I refer either to a license
22 or an STA.

23 A That's correct.

24 Q And the answer remains the same?

25 A The same.